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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

LAWRENCE J. HEINZ, RCP,
RESPONDENT.

FINAL DECISION AND ORDER
LS9907222MED

The State of Wisconsin, Medical Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision on of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Medical Examining Board.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 20th day of October, 1999.

Ronald Grossman, M.D.

STATE OF WISCONSIN

BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

LAWRENCE J. HEINZ, RCP,
RESPONDENT

PROPOSED DECISION AND ORDER
LS 9907222 MED

PARTIES

The parties to this action for the purposes of s. 227.53 Stats., are:

*Lawrence J. Heinz
3439 South 24th St.
Milwaukee, Wisconsin*

*Arthur Thexton
53215 Division of Enforcement
Department of Regulation and Licensing*

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on August 19, 1999, before Administrative Law Judge William A. Black. The Division of Enforcement appeared by Attorney Arthur Thexton. The respondent, Lawrence J. Heinz, did not appear.

Based on the entire record of this case, the undersigned administrative law judge recommends that the Medical Examining Board adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Respondent is Lawrence J. Heinz, RCP, date of birth, February 27, 1956, who is credentialed as a respiratory care practitioner in Wisconsin pursuant to license #2201, first granted on February 7, 1997. Respondent's address of record is 3439 S. 24th St., Milwaukee, WI 53215.
2. On February 3, 1999, Heinz was terminated by his employer, Lakeland Medical Center, following his making a written statement on that date admitting that he had taken liquid Tussionex®, a controlled substance as defined in s. 961.01(4), Stats., from a medication cart on six to eight prior occasions.
3. In his February 3, 1999 statement Heinz further admitted, "I regret taking medication I'am[sic] in jail at present, I'am[sic] looking into substance abuse help."
4. There is no evidence that Heinz has engaged in any treatment for his substance abuse problem.
5. At the time of his February 3, 1999 statement, Heinz was a Huber inmate at the Walworth County Sheriff's Department/Corrections Division.
6. A urinalysis performed on Heinz on January 5, 1998 indicated a positive result for morphine.
7. On March 31, 1999, Criminal Complaint, Case Number 99 CM 154 was filed in the Circuit Court for the County of Walworth charging Heinz under s. 943.20(1)(a), (3)(a) Stats., (Class A Misdemeanor Theft) for the theft of 600ml. of Tussionex valued at \$95.00, the hospital's cost. Heinz pled not guilty.
8. At a scheduled court appearance related to the criminal complaint held on July 14, 1999, Heinz failed to appear. A bench warrant was issued for his arrest.
9. Heinz does not have any prior disciplinary history with the Wisconsin Department of Regulation & Licensing through July 30, 1999.
10. On May 18, 1992, Heinz was convicted in Georgia of operating a motor vehicle under the influence.
11. On February 1, 1993, Heinz' Wisconsin license to operate a motor vehicle was revoked. (Habitual Traffic Offender)
12. On May 8, 1993, Heinz was convicted in Wisconsin of operating a motor vehicle under the influence.
13. On July 23, 1993, Heinz' Wisconsin license to operate a motor vehicle was revoked. (Operating Under the Influence)
14. On May 21, 1998, Heinz was convicted in Wisconsin of operating a motor vehicle under the influence, and failure to stop after an accident.
15. On September 1, 1998, Heinz' Wisconsin license to operate a motor vehicle was revoked. (Operating Under the Influence)
16. On March 12, 1999, Heinz was convicted in Wisconsin of operating a motor vehicle after revocation.
17. On March 29, 1999, Heinz' Wisconsin license to operate a motor vehicle was revoked. (Operating After Revocation)
18. On April 11, 1999, Heinz' Wisconsin license to operate a motor vehicle was suspended. (Blood Alcohol Concentration)
19. The present complaint was served on Heinz according to statute.

20. Heinz failed to answer the present complaint or appear at the August 19, 1999 hearing of this matter.

CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction in this matter pursuant to s. 448.02(3), Stats.
2. By failing to file an Answer as required by Wis. Admin. Code RL 2.09, and by failing to appear at the hearing, Heinz is in default under Wis. Admin. Code RL 2.14, and the Medical Examining Board may make findings and enter an order on the basis of the Complaint and the evidence presented at the hearing.
3. By obtaining a controlled substance as defined in s. 961.01(4), Stats., otherwise than in the course of legitimate professional practice, Heinz violated § Med 10.02(2)(p), Wis. Adm. Code.
4. By self administering a controlled substance as defined in s. 961.01(4), Stats., otherwise than in the course of legitimate professional practice, Heinz violated § Med 10.02(2)(p), Wis. Adm. Code.
5. By violating s. 943.20(1)(a), (3)(a) Stats., (Class A Misdemeanor Theft) the circumstances of which substantially relate to the circumstances of the practice of medicine, Heinz violated § Med 10.02(2)(z), Wis. Adm. Code.
6. By failing to appear as ordered for a court appearance in violation s. 971.04(1), Stats., the circumstances of which substantially relate to the circumstances of the practice of medicine, Heinz violated § Med 10.02(2)(z), Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the credential of Lawrence J. Heinz, license number 2201, to practice as a respiratory care practitioner in the State of Wisconsin is **REVOKED, costs to Complainant.**

OPINION

Section RL 2.14 of the Wisconsin Administrative Code provides that a respondent who fails to answer a complaint or fails to appear at a hearing is in default. If found to be in default, the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence against the respondent. In this case, Heinz did not file an answer to the above-captioned complaint, nor did he appear at the scheduled hearing. As a result, Heinz is in default.

Violation of § Med 10.02(2)(p), Wis. Adm. Code.

By Heinz' own admission he obtained controlled substances as defined in s. 961.01(4), Stats. The manner in which he obtained them, theft, is axiomatically not in the course of legitimate professional practice. Professionals in the health care field such as Heinz are subject to strict rules relating to the dispensing and administering of medications, and the accurate reporting thereof. The improper obtaining of medications, by theft or otherwise, is unprofessional conduct precisely because it interferes with the explicit record keeping requirements for medication delivery necessary to insure the safety and health of patients. Heinz Violated § Med 10.02(2)(p), by obtaining a controlled substance as defined in s. 961.01(4), Stats., otherwise than in the course of legitimate professional practice or as otherwise prohibited by law.

The admission in Heinz' February 3, 1999 written statement that, "I regret taking medication I'am[sic] in jail at present, I'am[sic] looking into substance abuse help." raises the direct and reasonable inference that Heinz ingested the subject Tussionex. The results of the urinalysis conducted while in jail on January 5, 1999 further support such an inference. Heinz Violated § Med 10.02(2)(p), Wis. Adm. Code by self administering a controlled substance as defined in s. 961.01(4) Stats., otherwise than in the course of legitimate professional practice or as otherwise prohibited by law.

Violation of § Med 10.02(2)(z), Wis. Adm. Code.

Heinz has been criminally charged with violating s.943.20(1)(a), (3)(a) Stats., (Class A Misdemeanor Theft). The standard of proof in this forum of administrative law is the preponderance of evidence, not the criminal standard of beyond a reasonable doubt. Therefore, as a noncriminal matter a finding can be made in this forum that Heinz indeed converted by theft a controlled substance, notwithstanding whatever results any criminal trial may bring. Aside from Heinz' default in the present matter, a preponderance of evidence contained in the record supports the finding that Heinz did commit theft of Tussionex on six to eight different occasions. Heinz' written statement of February 3, 1999 contains his admission to the theft which is the basis of the criminal complaint.

Heinz later attempts to rationalize away his February 3, 1999 admission by correspondence addressed to Steve Rohland of the Department of Regulation and Licensing, received by that Department on April 26, 1999. Heinz attempts to backtrack from this earlier admission and concoct rationale that his earlier statement was made for "unemployment reason[sic], so I would not collect". This after-the-fact attempt to defuse his February 3, 1999 statement is not credible because it asks a fact finder to assume: (1) his employer wanted and needed Heinz to do this as a favor (at the same time he was being fired), and (2) since his employer was prompting a current criminal investigation of Heinz, it would need this extra statement for unemployment purposes merely to avoid additional effort to demonstrate Heinz' termination was for cause.

Finally, it is not credible that any reasonable person would lack the presence of mind to realize the very real, eminent, and probable adverse ramifications of making such an admission as contained in Heinz' February 3, 1999 statement. Unfortunately such rationalizations at a later date only reflect upon Heinz' lack of remorse and resistance to seeking help for his problems. His blaming and rationalization may be symptoms of a substance abuse problem, but they are not credible evidence of innocence.

The circumstances of this violation of law substantially relate to the practice of medicine. The exact same circumstances which constitute unprofessional conduct by obtaining a controlled substance otherwise than in the course of legitimate professional practice, (§ Med 10.02(2)(p), Wis. Adm. Code) also are the circumstances which satisfy the factual elements of theft for which Heinz has violated s. 943.20(1)(a), (3)(a) Stats. Heinz wrongly took a controlled substance from his employer. In this instance, Heinz as a credentialed practitioner is the specific person contemplated who, while subject to the rules of professional practice, can actually violate both a practice rule and a statutory theft law by the same act. Heinz has done so here. The abuse of his position of trust as a respiratory care practitioner also violated state criminal law.

By failing to appear for his trial on July 14, 1999, Heinz violated s. 971.04(1) Stats., which requires that unless excused a defendant shall be present at trial. The criminal trial and Heinz' failure to appear are also substantially related to the practice of medicine. As a direct result of Heinz' actions by abuse of his position of professional trust he violated a state criminal law requiring him to stand trial on a criminal charge. Rather than face the consequences of his actions and begin the process of accepting responsibility he has instead chosen to maintain his current life path. Heinz apparently believes that whatever forum may wish to discipline him for his actions, he is above the authority of that forum and that discipline.

Heinz has therefore violated § Med 10.02(2)(z), Wis. Adm. Code twice, by violating two laws the circumstances of which substantially relate to the circumstances of the practice of medicine.

The final issue here is the appropriate discipline for Heinz, keeping in mind the nature of the charges and the pattern and practice of his activities leading to this proceeding. Revocation of his license has been recommended. It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*. 41 Wis. 2d 481, 485 (1969).

There is nothing in the record to suggest that imposing any discipline short of revocation would have a rehabilitative effect on Heinz or that he even has an interest in being rehabilitated. Heinz has not come forward to show remorse, an explanation, or cooperation with the Board in this matter. Heinz has chosen not to subject himself to the criminal justice system, and take responsibility for his actions.

Although Heinz has no record of previous discipline with the Board, it is more owing to luck. The record is replete with a long history of substance abuse by Heinz. The previous driving convictions and license suspensions and revocations speak volumes as to Heinz' past. Heinz has tested positive for morphine while in jail (the incarceration resulting from alcohol abuse) Heinz has deep and profound problems with substance abuse and attempting to fashion a remedy short of revocation without Heinz' cooperation would be futile. If Heinz at some future time decides to change his course and rebuild his life there may be the opportunity for rehabilitation, if possible.

Absent some mitigating evidence (of which none has been presented), imposing anything less than revocation would not aid in deterrence. To not revoke Heinz' license would instead wrongly signal others to engage in similar conduct without consequence. Revocation remains as the only way in which to safeguard the public. By revoking Heinz' license the public will be adequately protected from any further misconduct by him.

Dated at Madison, Wisconsin, this 2nd day of September, 1999.

STATE OF WISCONSIN

DEPARTMENT OF REGULATION & LICENSING

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William Anderson Black

Administrative Law Judge